

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

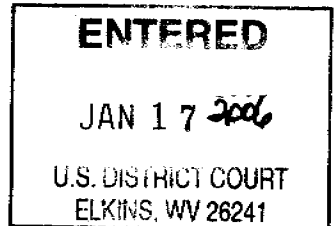
**UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**JOHNNY RAY FANCHER,**

**Defendant.**



**2:05 CR 13  
(MAXWELL)**

**ORDER**

It will be recalled that the Defendant, Johnny Ray Fancher, was the sole named Defendant in a five-count indictment, which indictment was returned in the United States District Court for the Northern District of West Virginia at the Elkins point of court on April 19, 2005. It will further be recalled that by Order entered on July 25, 2005, the Court Ordered that the Defendant be committed to the custody of the Attorney General for the purpose of conducting a psychiatric and psychological examination. On October 27, 2005, the Court received the completed Forensic/Psychiatric Report and filed the same under seal.

On November 14, 2005, Defendant Johnny Ray Fancher entered a plea of guilty before Magistrate Judge John S. Kaull to Count Two of the five-count Indictment, which Count charges the Defendant with receipt of child pornography in violation of Title 18, U.S.C., Section 2252A(a)(2)(A). Also on November 14, 2005, a Waiver of Article III Judge and Consent to Enter a Guilty Plea Before U.S. Magistrate Judge was filed with the Court, and the plea agreement entered into by the Defendant was filed with the Court on November 16, 2005. On November 16, 2005, Magistrate Judge Kaull filed

with the Court his Report and Recommendation regarding the November 14, 2005 change of plea proceedings, wherein the Magistrate Judge recommends that the Defendant's plea of guilty to Count Two be accepted, that the Forensic Report be adopted, and that the Defendant be found competent. The parties were directed, in accordance with 28 U.S.C. § 636(b)(1), to file with the Clerk of Court any written objections within ten (10) days after being served with a copy of the Report and Recommendation. No objections have been received.

Upon examination of the Report and Recommendation from the Magistrate Judge, the Plea Agreement filed with the Court, the Waiver of Article III Judge and Consent filed with the Court, and the Forensic Report, it appears to the Court that all matters raised and suggested by Magistrate Judge Kaull in his Report and Recommendation are appropriate. The Court finds, based upon its review, that a factual basis existed for said plea, that the plea was made freely and voluntarily, and that the Defendant understood the nature of the charges and the consequences of his plea of guilty before the Magistrate Judge. The Court further finds, based on the Forensic Report, which shall be adopted herein, that the Defendant is competent. Therefore, it is hereby

**ORDERED** that the Magistrate Judge's Report and Recommendation shall be, and the same hereby is, accepted in whole, adopted by this Court, and incorporated herein. It is further

**ORDERED** that the Forensic Report shall be adopted by this Court and the Defendant is hereby found to be **COMPETENT**. It is further

**ORDERED** that, based upon the aforementioned findings, the Defendant's plea of guilty to Count Two of the Indictment shall be, and the same hereby is accepted. It is further

**ORDERED** that acceptance of the plea agreement, any stipulations contained in the Plea Agreement, and the binding and nonbinding recommendations contained therein shall be, and the same hereby are, deferred until the Court has received and reviewed the Presentence Report, which Magistrate Judge Kaull directed the Probation Officer to prepare in this matter.

The Clerk of the Court is directed to transmit certified copies of this Order to Counsel for the United States, to Counsel for Defendant, and to the Probation Office.

ENTER: January 17<sup>th</sup>, 2006

  
United States District Judge